Barton

and

Hamilton

Full Text of the Judgment of Judge Anglin

in the

Water and Sewer Cases

Recently Tried

With Comments and Conclusions by Township Solicitor

HAMILTON PUBLIC LIBRARY

SEP 9 1952
Copy 1

NOTICE

To Residents of Barton

The following is a copy of Mr. Justice Anglin's judgment as settled by him and signed:

In the High Court of Justice

HON. MR. JUSTICE ANGLIN

The seventeenth day of December, 1908, between

THE CORPORATION OF THE TOWNSHIP OF BARTON, THOMAS BARNES, J. H. SOMERVILLE AND HANNAH COWELL.

Plaintiffs,

AND

THE CORPORATION OF THE CITY OF HAMILTON

Defendants.

I. This action coming on for trial on the 30th day of November, 1908, before this court at the sittings holden at Hamilton for trial of actions without a jury, in presence of counsel for all parties, upon hearing read the pleadings, and hearing the evidence adduced, this Court was pleased to direct this action to stand over for the further hearing of evidence and counsel until the 1st day of December, 1908. And this action coming on for the further hearing of evidence on the said 1st day December, 1908, in presence of counsel aforesaid, this Court was pleased to direct this action should further stand over until the 3rd day of December, 1908, for

the further hearing of evidence and counsel, and not being reached on that day this action stood over until the 4th day of December, 1908, and this action coming on the said 4th day of December, 1908, in presence of counsel for all of said parties, upon hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment in presence of counsel aforesaid,

2. This Court doth declare that the agreement bearing date the 6th day of March, 1903, made between the Corporation of the City of Hamilton and the Corporation of the Township of barton, referred to in the fifth paragraph of the statement of claim herein, and proclaimed by the Lieutenant-Governor of the Province of Ontario in Council by proclamation bearing date the 13th day of March, 1903, and referred to in the 6th paragraph of the statement of claims herein is intro vires and valid and binding on all parties on the terms and conditions as expresssed in said proclamation, and that those residents of Barton who are within the terms of the said agreement of the 6th of March, 1903, although not parties to this action, have enforceable rights thereunder.

3. This Court doth further declare that at the present time the water supply of the City of Hamilton is inadequate for fire purposes and that it cannot add to the present demands upon its present service without incurring serious danger and cannot now be compelled to supply residents of Barton aforesaid with water.

4. This Court doth further declare that the agreements of the 6th October, and 27th October, 1902, referred to in the 19th paragraph of the statement of claim herein should be read and construed as one agreement, but this Court doth further declare that said agreements were ultra vires of the City of Hamilton.

5. This Court doth further declare that the defendants

are not entitled to require residents of Barton as a condition of furnishing them with water under the agreement of 6th March, 1903, and proclamation of 13th March, 1903, to execute agreements containing provisions as to not opposing annexation of territory with City of Hamilton, as to replenishing pipes and other appliances laid and paid for by them.

6. This Court doth further declare that the defendants are not entitled to require the plaintiffs and other signatories and subscribers to the agreements of 6th and 27th October, 1902, in the pleadings mentioned, and other residents of Barton, as a condition of giving sewer accommodation under the agreement of 6th March, 1903, and proclamation of 13th March, 1903, to execute agreements containing provisions as to not opposing annexation of territory with City of Hamilton and as to relinquishing ownership of pipes, etc., laid and paid for by them.

7. This Court doth further declare that the plaintiff, Thomas Barnes, is entitled to have the houses erected on his property in Barton connected with the sewers of the City of Hamilton, as claimed in the statement of claim in this action under and upon the terms of said agreement of 6th March, 1903, and said proclamation of 13th March, 1903, and this Court doth order and direct the defendants to afford to the plaintiff, Thomas Barnes, such sewer connection accordingly and that the defendant do within a reasonable time restore the connection of the said Barnes which they cut off.

And this Court doth further declare that the sewer on Sherman Avenue in the city of Hamilton is not overcharged and that the sewer into which the Sherman Avenue sewer debouches is capable of carrying off any sewage and water which can be carried down by the Sherman Avenue sewer.

9. And this court doth further order and adjudge that

the defendants do pay to the plaintiffs their costs of this action forthwith after taxation.

Judgment signed the 9th day of February, 1909.

T. H. A. BEGUE,
Deputy Clerk.

Settled—Sgd. F. A.
8—2—09. J.

Entered in Judg't Book B,
Folio 280,
9th February, 1909

T. H. A. BEGUE,
D. C.

On the trial of this action Mr. Fellowes, the expert witness called by the city, proved conclusively that the water supply of the city of Hamilton is totally inadequate for fire protection, and that if an extensive fire should break out at any time when the pumps where not keeping pipes full (which is of daily occurrence) or if one of the engines should break down or any other accident to water supply should occur the city would be absolutely without fire protection. That the Barton reservoir of eleven million gallons' capacity is useless for fire protection. That the only reservoir of any avail for that purpose is the James Street reservoir of one and one-half million gallons (and this is usually half empty in the afternoon).

Under these circumstances if the city should attempt to furnish water to residents of Barton lying east of the city

and north of the mountain as an inducement to come into the city before establishing increased pumping capacity, the city would undoubtedly be restrained by injunction by some of the present ratepayers of Hamilton.

As soon as the city increases their pumping capacity so as to enable them with safety to furnish water to above district, residents of Barton under Mr. Justice Anglin's judgment are entitled to water and can compel the city to furnish it under agreement of March, 1903.

Hamilton, 11th February, 1909.

W. A. H. DUFF,
Solicitor for Township of Barton